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Filing date: **09/04/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91222051
Party	Plaintiff Kraft Foods Group Brands LLC
Correspondence Address	BARBARA A SOLOMON FROSS ZELNICK LEHRMAN & ZISSU PC 866 UNITED NATIONS PLAZA NEW YORK, NY 10017 UNITED STATES bsolomon@fzlz.com, ykarzoan@fzlz.com
Submission	Other Motions/Papers
Filer's Name	Barbara A. Solomon
Filer's e-mail	bsolomon@fzlz.com, ykarzoan@fzlz.com
Signature	/Barbara A. Solomon/
Date	09/04/2015
Attachments	First Amended Notice of Opposition 91222051.pdf(1375439 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

KRAFT FOODS GROUP BRANDS LLC,

Opposer,

Opposition No. 91222051

-against-

IT'S A 10, INC.,

Applicant.

**FIRST AMENDED NOTICE OF OPOSITION**

In the matter of the trademark application of It's a 10, Inc., for registration of the mark MIRACLE WHIPPED in Classes 3 for "A full line of hair care products, namely, shampoos, conditioners, hair rinses, hair cream, hair cream rinse, hair balms, hair styling balms and creams, hair gels, and hair sprays," Application No 86-346128, filed July 23, 2014, and published in the Official Gazette of February 17, 2015:

Opposer, Kraft Foods Group Brands LLC, a Delaware Limited Liability Company, believes it will be damaged by registration of the mark shown in the application and, therefore, opposes the registration of this trademark.

As grounds for this opposition, Opposer states as follows:

1. For many years prior to Applicant's filing date, Opposer has been engaged in the manufacture and sale of food products throughout the United States under the MIRACLE WHIP trademark. Opposer's date of first use of the MIRACLE WHIP mark extends back to 1933.

2. Opposer's MIRACLE WHIP branded products are available throughout the United States in thousands of stores: from mom-and-pop stores to grocery stores to convenience stores to club stores.

3. Opposer's yearly sales of products bearing or sold under the MIRACLE WHIP mark in the United States are approximately \$460MM. Products bearing the MIRACLE WHIP mark are of high quality and are identified and recognized as being exclusively from Opposer.

4. The MIRACLE WHIP mark appears on the packaging of Opposer's product as well as being featured prominently in print, TV and digital advertisements that are distributed nationally and are seen by hundreds of millions of people.

5. For many years, Opposer has maintained the website at [www.miraclewhip.com](http://www.miraclewhip.com) that advertises and promotes MIRACLE WHIP branded products and is visited by consumers nationwide. The MIRACLE WHIP brand is also on many social media platforms, including FACEBOOK, TWITTER, TUMBLR, and INSTAGRAM.

6. By virtue of the excellence of Opposer's products and long history of extensive promotional activities and sales thereof, the MIRACLE WHIP mark has gained a tremendous amount of goodwill such that the public has come to identify the business and products designated by the MIRACLE WHIP marks as those of Opposer. The MIRACLE WHIP mark acquired this goodwill long before any date on which Applicant may rely.

7. By virtue of Opposer's long use, extensive sales, advertising, and promotional efforts, Opposer's MIRACLE WHIP trademark is distinctive and famous. The MIRACLE WHIP trademark achieved that distinctiveness and fame prior to any date on which Applicant may rely.

8. Opposer owns all right, title and interest in and to the following registrations in the United States Patent and Trademark Office for the MIRACLE WHIP trademark, including:

Mark	Reg. No.	Date of Registration	Goods/Services
MIRACLE WHIP	2103423	10/07/1997	Salad Dressing
MIRACLE WHIP (Stylized)	308260	11/28/1933	Salad Dressing and Salad Spread

Said registrations in the name of Opposer are maintained on the Principal Register by the United States Patent and Trademark Office and are valid, in full force and effect, and constitute prima facie evidence of the validity of the mark shown and of Opposer's exclusive right to use it on the goods identified in the registrations, pursuant to §7(b) of the Lanham Act, 15 U.S.C. § 1057(b). Attached as **Exhibit 1** are printouts from the USPTO database showing status and title of the identified registrations.

9. Opposer's Registration Nos. 308260 and 2103423 have become incontestable under 15 U.S.C. §1065 and the certificates of registration thereof constitute "conclusive evidence of the validity of the registered marks[s] and of the registration of the marks[s], of the registrant's ownership of the mark[s], and of the registrant's exclusive right to use the registered mark[s] in commerce" pursuant to 15 U.S.C. §1065(b).

10. As a result of Opposer's over 80 years of use in commerce in the United States, the MIRACLE WHIP mark has acquired enormous value and has become famous and well-known to the consuming public and the trade as identifying and distinguishing goods exclusively from, or authorized by, Opposer.

11. Upon information and belief, It's a 10, Inc. is a Florida Corporation located at 153

Nurmi Drive, Fort Lauderdale, Florida 33301.

12. Applicant is not connected to Opposer in any way.

13. According to the records of the United States Patent and Trademark Office, on July 23, 2014, Applicant applied to register MIRACLE WHIPPED for “A full line of hair care products, namely, shampoos, conditioners, hair rinses, hair cream, hair cream rinse, hair balms, hair styling balms and creams, hair gels, and hair sprays” in Class 3.

14. Applicant’s mark incorporates in its entirety Opposer’s recognized MIRACLE WHIP trademark.

15. As a matter of law, Applicant was on constructive notice of Opposer’s rights in the MIRACLE WHIP mark based on Opposer’s registrations that were in existence prior to the application filing date, and Applicant had such constructive notice before adopting the mark and filing the application.

**CLAIM 1**  
**DILUTION UNDER 15 U.S.C. §§ 1052(f), 1063**

16. Opposer repeats and realleges paragraphs 1 through 15 as if fully set forth herein.

17. Pursuant to 15 U.S.C. §§ 1052(f) and 1063, trademark applications may be opposed on grounds of dilution.

18. Opposer’s MIRACLE WHIP mark is extraordinarily famous and well-known throughout the United States having been used, advertised and publicized extensively for over 80 years. The MIRACLE WHIP mark is inherently distinctive, has acquired secondary meaning such that it has become associated exclusively with Opposer by reason of Opposer’s extensive advertising and use of the mark for decades, is the subject of incontestable federal trademark registrations, and is widely recognized by the general consuming public as a

designation of source of Opposer's goods.

19. Applicant's filing date for MIRACLE WHIPPED in July 2014 is long after Opposer's MIRACLE WHIP trademark became famous.

20. Applicant's applied-for-mark MIRACLE WHIPPED incorporates "MIRACLE WHIP" which is identical to Opposer's famous, registered, and long-used MIRACLE WHIP mark and that calls to mind Opposer's famous MIRACLE WHIP mark. By virtue of the similarity between the mark shown in the application and the MIRACLE WHIP mark, the fame of the MIRACLE WHIP mark, and the exclusive association between the MIRACLE WHIP mark and Opposer, registration of the mark at issue would dilute or is likely to dilute Opposer's MIRACLE WHIP mark by impairing the distinctiveness of Opposer's MIRACLE WHIP mark to identify exclusively goods from Opposer in violation of Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f).

21. Registration of the mark shown in the application herein opposed would be inconsistent with Opposer's prior rights in the MIRACLE WHIP mark and with Opposer's statutory grant of exclusive rights in the MIRACLE WHIP mark, and would destroy Opposer's investment and goodwill in its MIRACLE WHIP mark.

22. By reason of the foregoing, Opposer is likely to be harmed by registration of the mark shown in the application.

## **CLAIM 2**

### **LIKELIHOOD OF CONSUMER CONFUSION UNDER 15 U.S.C. § 1052(d)**

23. Opposer repeats and realleges paragraphs 1 through 15 as if fully set forth herein.

24. Applicant filed its application to register MIRACLE WHIPPED on July 23, 2014 based on an intent to use the mark. The application filing date, and the date on which Applicant



actually commenced use of the mark MIRACLE WHIPPED in connection with hair products, are long after Opposer first used and registered the MIRACLE WHIP mark.

25. Upon information and belief, prior to Applicant's adoption of MIRACLE WHIPPED as a mark for hair care products, and prior to Applicant's filing of the application opposed herein, Applicant was on actual notice of Opposer's prior rights in and to the MIRACLE WHIP mark.

26. Opposer's rights in the MIRACLE WHIP mark pre-date and are superior to any rights Applicant may claim in the mark MIRACLE WHIPPED.

27. The marks MIRACLE WHIP and MIRACLE WHIPPED are virtually identical in sound, meaning and commercial impression.

28. Although the primary use of Opposer's MIRACLE WHIP mark is in connection with dressings and spreads, there are other known uses of Opposer's MIRACLE WHIP brand of product. Opposer's MIRACLE WHIP brand product has been widely touted as an effective do-it-yourself hair and skin moisturizing treatment. *See, e.g.,*

<https://www.facebook.com/miraclewhip> (Opposer's post: "Miracle Whip can be many things. A condiment or an ingredient, for example. What else can Miracle Whip be?" Comment "Hair treatment" (6/9/11; 6/10/11); Comment: "my mother used to put miracle whip in our hair" (4/5/13)); <http://lipglossnheels.blogspot.com/2011/06/diy-beauty-fridays-miracle-of.html> (recipe for "Miracle Whip Deep Conditioner");

[http://www.healthrecipes.com/homemade\\_beauty\\_recipes.htm](http://www.healthrecipes.com/homemade_beauty_recipes.htm) ("Miracle Whip Exfoliator").

29. The use of MIRACLE WHIP branded products by consumers for hair and skin care makes the goods offered under Applicant's mark at least viably related to the goods sold under Opposer's mark.

30. It is not unusual, and the TTAB has noted, that there is and can be a relationship between cosmetic products and food and beverage products. Indeed, numerous companies have registered the identical mark for goods in both categories.

31. Applicant's application is unrestricted with respect to classes of consumers. Applicant's goods are therefore presumed to be sold in all channels of trade, which would include the same mass market stores, grocery stores and other retailers that carry Opposer's MIRACLE WHIP products. As such, the trade channels for the parties' products overlap.

32. Applicant's application is unrestricted as to consumers. As such, Applicant's consumers would cover all consumers who purchase hair care products, a broad category that would overlap with general consumers for Opposer's products and would specifically overlap with those consumers who have used or are aware of the use of Opposer's products as a do-it-yourself hair conditioner.

33. Given that consumers already recognize that MIRACLE WHIP branded products can be used for hair care, and in light of the general recognition of the MIRACLE WHIP mark, Applicant's registration of MIRACLE WHIPPED, which adopts in its entirety the MIRACLE WHIP trademark for goods that have a viable relationship to Opposer's goods is likely to cause confusion among consumers who are likely to believe that Applicant's goods come from or are otherwise associated with or endorsed by Opposer or otherwise believe that there is some relationship between Applicant and Opposer.

34. Registration of the mark MIRACLE WHIPPED in connection with the goods set forth in Application Serial No. 86/346,128 violates Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

35. Registration of Applicant's mark would be inconsistent with Opposer's prior rights in its MIRACLE WHIP mark and with Opposer's statutory grant of exclusive rights in the



MIRACLE WHIP mark, and would harm Opposer's investment and goodwill in the MIRACLE WHIP mark.

36. By reason of the foregoing, Opposer is likely to be harmed by registration of the mark shown in the opposed application.

**CLAIM 3**  
**DECEPTIVE UNDER 15 U.S.C. 1052(a) OR DESCRIPTIVELY MISDESCRIPTIVE**  
**UNDER 15 U.S.C. § 1052(e)**

37. Opposer repeats and realleges Paragraphs 1 through 15 as if fully set forth herein.

38. Applicant has alleged in its answer to the Notice of Opposition that "WHIP" is generic. However, in response to an Office Action requiring a disclaimer of "WHIPPED", Applicant has argued that WHIPPED does not describe a quality, characteristic or function of Applicant's hair products and that the majority of the goods identified in its Application "would not even be conceivable to sell" with a whipped consistency and that none of the products on which it uses the mark has a whipped texture. Based on these statements made by Applicant, Applicant's mark, when applied to the goods recited in the opposed application, consist of deceptive matter in violation of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), because the products in fact are not whipped and do not have a whipped consistency.

39. In the alternative, based on Applicant's statements, Applicant's MIRACLE WHIPPED mark, when applied to the goods recited in the opposed application, is deceptively misdescriptive of those goods, as it misdescribes the consistency or characteristics of the identified products and thus the mark is in violation of Section 2(e) of the Lanham Act, 15 U.S.C. § 1052(e).

WHEREFORE, it is respectfully requested that Opposer's Opposition be sustained and that the mark sought to be registered by Applicant in Application Serial No. 86/346128 be denied.

Opposer has already paid the requisite fee for institution of these proceedings.

Dated: New York, New York  
September 4, 2015

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 

Barbara A. Solomon

Leo Kittay

866 United Nations Plaza

New York, New York 10017

Tel: (212) 813-5900

Email: bsolomon@frosszelnick.com

lkittay@frosszelnick.com

*Attorneys for Opposer*

# EXHIBIT 1

Generated on: This page was generated by TSDR on 2015-09-04 14:12:07 EDT

Mark: MIRACLE WHIP

US Serial Number: 75184663  
US Registration Number: 2103423  
Register: Principal  
Mark Type: Trademark  
Status: The registration has been renewed.  
Status Date: Oct. 29, 2007  
Publication Date: Jul. 15, 1997  
Application Filing Date: Oct. 21, 1996  
Registration Date: Oct. 07, 1997

## Mark Information

Mark Literal Elements: MIRACLE WHIP  
Standard Character Claim: No  
Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

## Related Properties Information

Claimed Ownership of US 0308260 and others  
Registrations:

## Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "\*" identify additional (new) wording in the goods/services.

For: salad dressing  
International Class(es): 030 - Primary Class  
U.S Class(es): 046  
Class Status: ACTIVE  
Basis: 1(a)  
First Use: Jan. 24, 1933  
Use in Commerce: Jan. 24, 1933

## Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

## Current Owner(s) Information

Owner Name: KRAFT FOODS GROUP BRANDS LLC  
Owner Address: THREE LAKES DRIVE  
NORTHFIELD, ILLINOIS 60093  
UNITED STATES  
Legal Entity Type: LIMITED LIABILITY COMPANY  
State or Country Where Organized: DELAWARE

## Attorney/Correspondence Information

**Attorney Name:** SUSAN HANAWAY FROHLING  
**Attorney Primary Email Address:** [trademark@kraft.com](mailto:trademark@kraft.com)  
**Attorney of Record**  
**Docket Number:** 57547 Enhanc  
**Attorney Email Authorized:** Yes  
**Correspondent**  
**Correspondent Name/Address:** SUSAN HANAWAY FROHLING  
KRAFT FOODS HOLDINGS, INC  
THREE LAKES DRIVE  
NORTHFIELD, ILLINOIS 60093  
UNITED STATES  
**Phone:** 8476465657  
**Correspondent e-mail:** [trademark@kraft.com](mailto:trademark@kraft.com)  
**Fax:** 8476465101  
**Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Mar. 27, 2013	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 17, 2012	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 29, 2008	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 29, 2007	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	61619
Oct. 29, 2007	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Oct. 18, 2007	ASSIGNED TO PARALEGAL	61619
Oct. 03, 2007	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Oct. 03, 2007	TEAS SECTION 8 & 9 RECEIVED	
Mar. 01, 2007	CASE FILE IN TIGRS	
Dec. 03, 2002	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Oct. 14, 2002	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Oct. 14, 2002	TEAS SECTION 8 & 15 RECEIVED	
Oct. 07, 1997	REGISTERED-PRINCIPAL REGISTER	
Jul. 15, 1997	PUBLISHED FOR OPPOSITION	
Jun. 13, 1997	NOTICE OF PUBLICATION	
Apr. 25, 1997	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 19, 1997	ASSIGNED TO EXAMINER	69233

## Maintenance Filings or Post Registration Information

**Affidavit of Continued Use:** Section 8 - Accepted  
**Affidavit of Incontestability:** Section 15 - Accepted  
**Renewal Date:** Oct. 07, 2007

## TM Staff and Location Information

**TM Staff Information - None**  
**File Location**  
**Current Location:** POST REGISTRATION  
**Date in Location:** Oct. 29, 2007

## Assignment Abstract Of Title Information

### Summary

**Total Assignments:** 3

**Registrant:** Kraft Foods, Inc.

### Assignment 1 of 3

**Conveyance:** ASSIGNS THE ENTIRE INTEREST

**Reel/Frame:** [2040/0212](#)

**Pages:** 59

Date Recorded: Jan. 27, 2000

Supporting Documents: No Supporting Documents Available

Name: KRAFT FOODS, INC.

Legal Entity Type: CORPORATION

Name: KRAFT FOODS HOLDINGS, INC.

Legal Entity Type: CORPORATION

Address: THREE LAKES DRIVE  
NORTHFIELD, ILLINOIS 60093

Correspondent Name: KRAFT FOODS

Correspondent Address: JACQUELINE A. LEIMER  
THREE LAKES DRIVE NF-358  
NORTHFIELD, IL 60093

**Assignor**

Execution Date: Dec. 26, 1999

State or Country Where  
Organized: DELAWARE

**Assignee**

State or Country Where  
Organized: DELAWARE

**Correspondent**

Domestic Representative - Not Found

**Assignment 2 of 3**

Conveyance: MERGER EFFECTIVE 08042008

Reel/Frame: 3877/0870

Pages: 9

Date Recorded: Oct. 25, 2008

Supporting Documents: assignment-tm-3877-0870.pdf

Name: KRAFT FOODS HOLDINGS, INC.

Legal Entity Type: CORPORATION

Name: KRAFT FOODS GLOBAL BRANDS LLC

Legal Entity Type: LIMITED LIABILITY COMPANY

Address: THREE LAKES DRIVE  
NF 584  
NORTHFIELD, ILLINOIS 60093

Correspondent Name: KRAFT FOODS GLOBAL BRANDS LLC

Correspondent Address: THREE LAKES DRIVE  
NF 584  
NORTHFIELD, IL 60093

**Assignor**

Execution Date: Aug. 01, 2008

State or Country Where  
Organized: DELAWARE

**Assignee**

State or Country Where  
Organized: DELAWARE

**Correspondent**

Domestic Representative - Not Found

**Assignment 3 of 3**

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: 4877/0862

Pages: 40

Date Recorded: Oct. 10, 2012

Supporting Documents: assignment-tm-4877-0862.pdf

Name: KRAFT FOODS GLOBAL BRANDS LLC

Legal Entity Type: LIMITED LIABILITY COMPANY

Name: KRAFT FOODS GROUP BRANDS LLC

Legal Entity Type: LIMITED LIABILITY COMPANY

Address: THREE LAKES DRIVE  
NORTHFIELD, ILLINOIS 60093

Correspondent Name: SUSAN H. FROHLING

Correspondent Address: THREE LAKES DRIVE  
KRAFT FOODS LAW DEPARTMENT  
NORTHFIELD, IL 60093

**Assignor**

Execution Date: Sep. 29, 2012

State or Country Where  
Organized: DELAWARE

**Assignee**

State or Country Where  
Organized: DELAWARE

**Correspondent**

Domestic Representative - Not Found



# Proceedings

## Summary

Number of Proceedings: 1

### Type of Proceeding: Opposition

Proceeding Number: 91222051

Filing Date: May 21, 2015

Status: Pending

Status Date: May 21, 2015

Interlocutory Attorney: WENDY COHEN

### Defendant

Name: It's a 10, Inc.

Correspondent Address: MERRY L BIGGERSTAFF  
TIAJOLOFF & KELLY LLP  
405 LEXINGTON AVE  
NEW YORK NY , 10174-0002  
UNITED STATES

Correspondent e-mail: mbiggerstaff@tkiplaw.com

### Associated marks

Mark	Application Status	Serial Number	Registration Number
MIRACLE WHIPPED	Opposition Pending	<u>86346128</u>	
	Plaintiff(s)		

Name: Kraft Foods Group Brands LLC

Correspondent Address: BARBARA A SOLOMON  
FROSS ZELNICK LEHRMAN & ZISSU PC  
866 UNITED NATIONS PLAZA  
NEW YORK NY , 10017  
UNITED STATES

Correspondent e-mail: bsolomon@fziz.com , ykarzoan@fziz.com

### Associated marks

Mark	Application Status	Serial Number	Registration Number
MIRACLE WHIP	Renewed	<u>71340290</u>	<u>308260</u>
MIRACLE WHIP	Renewed	<u>75184663</u>	<u>2103423</u>

### Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	May 21, 2015	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	May 21, 2015	Jun 30, 2015
3	PENDING, INSTITUTED	May 21, 2015	
4	ANSWER	Jun 30, 2015	
5	P APPEARANCE / POWER OF ATTORNEY	Aug 20, 2015	

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Mark: MIRACLE WHIP

*Miracle Whip*

US Serial Number: 71340290

Application Filing Date: Aug. 01, 1933

US Registration Number: 308260

Registration Date: Nov. 28, 1933

Register: Principal

Mark Type: Trademark

Status: The registration has been renewed.

Status Date: Dec. 12, 2013

## Mark Information

Mark Literal Elements: MIRACLE WHIP

Standard Character Claim: No

Mark Drawing Type: 5 - AN ILLUSTRATION DRAWING WITH WORD(S) /LETTER(S)/ NUMBER(S) INSTYLIZED FORM

Disclaimer: THE WORD "WHIP" IS DISCLAIMED APART FROM THE MARK AS SHOWN IN THE DRAWING.

## Related Properties Information

Publish Previously: Yes

Registered Mark:

Previously Registered: Jul. 06, 1948

Mark Publication Date:

## Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*,\*,\* identify additional (new) wording in the goods/services.

For: SALAD DRESSING AND SALAD SPREAD

International Class(es): 029

U.S Class(es): 046 - Primary Class

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 24, 1933

Use in Commerce: Jan. 24, 1933

## Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

## Current Owner(s) Information

Owner Name: KRAFT FOODS GROUP BRANDS LLC

Owner Address: THREE LAKES DRIVE  
NORTHFIELD, ILLINOIS 60093  
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where  
Organized: DELAWARE

## Attorney/Correspondence Information

Attorney of Record

Attorney Name: Matthew A. Griffin

Docket Number: 71294/Enhanc

Attorney Primary Email [trademark@kraftfoods.com](mailto:trademark@kraftfoods.com)  
Address:

Attorney Email Yes  
Authorized:

**Correspondent**

Correspondent Name/Address: Matthew A. Griffin  
Three Lakes Drive  
Kraft Foods Law Department  
NORTHFIELD, ILLINOIS 60093-2758  
UNITED STATES

Phone: 847-646-4872

Correspondent e-mail: [trademark@kraftfoods.com](mailto:trademark@kraftfoods.com)

Correspondent e-mail Yes  
Authorized:

Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Dec. 12, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Dec. 12, 2013	REGISTERED AND RENEWED (FIFTH RENEWAL - 10 YRS)	69471
Dec. 12, 2013	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	69471
Nov. 27, 2013	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	69471
Dec. 12, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	69471
Nov. 27, 2013	TEAS SECTION 8 & 9 RECEIVED	
Mar. 27, 2013	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 17, 2012	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 29, 2008	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 02, 2008	CASE FILE IN TIGRS	
May 27, 2003	REGISTERED AND RENEWED (FOURTH RENEWAL - 10 YRS)	
May 27, 2003	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Mar. 19, 2003	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Mar. 19, 2003	TEAS SECTION 8 & 9 RECEIVED	
May 19, 1994	REGISTERED AND RENEWED (THIRD RENEWAL - 10 YRS)	
May 12, 1994	POST REGISTRATION ACTION CORRECTION	
Mar. 10, 1994	REGISTERED - SEC. 9 FILED/CHECK RECORD FOR SEC. 8	
Nov. 28, 1973	REGISTERED AND RENEWED (SECOND RENEWAL - 20 YRS)	

## Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: Nov. 28, 2013

## TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE

Date in Location: Dec. 12, 2013

## Assignment Abstract Of Title Information

### Summary

Total Assignments: 9

Registrant: KRAFT-PHENIX CHEESE CORPORATION

### Assignment 1 of 9

Conveyance: MERGER 19570531DE

Reel/Frame: 0031/0580

Pages: 3

Date Recorded: Jul 30, 1957

Supporting Documents: No Supporting Documents Available

Assignor

Name: KRAFT FOODS COMPANY.  
Legal Entity Type: UNKNOWN

Execution Date: May 31, 1957  
State or Country Where Organized: No Place Where Organized Found

**Assignee**

Name: NATIONAL DAIRY PRODUCTS CORPORATION.  
Legal Entity Type: UNKNOWN

State or Country Where Organized: No Place Where Organized Found

Address: No Assignee Address Found

**Correspondent**

Correspondent Name: NATIONAL DAIRY PRODUCTS CORP.  
Correspondent Address: 260 MADISON AVE.  
NEW YORK 16, NY

**Domestic Representative - Not Found**

**Assignment 2 of 9**

Conveyance: CHANGE OF NAME 19690418

Reel/Frame: 0183/0152

Pages: 1

Date Recorded: Jun. 09, 1969

Supporting Documents: No Supporting Documents Available

**Assignor**

Name: NATIONAL DAIRY PRODUCTS CORPORATION  
Legal Entity Type: UNKNOWN

Execution Date: May 06, 1969  
State or Country Where Organized: No Place Where Organized Found

**Assignee**

Name: KRAFTCO CORPORATION  
Legal Entity Type: UNKNOWN

State or Country Where Organized: No Place Where Organized Found

Address: No Assignee Address Found

**Correspondent**

Correspondent Name: ANDERSON, LUEDEKA, FITCH, EVEN & TABIN  
Correspondent Address: 2157 FIELD BLDG,  
135 SOUTH LA SALLE ST.  
CHICAGO, IL 60603

**Domestic Representative - Not Found**

**Assignment 3 of 9**

Conveyance: CERTIFICATE BY THE SECRETARY OF STATE OF DELAWARE, SHOWING CHANGES OF NAMES ON APRIL 18, 1969 AND OCT. 27, 1976, RESPECTIVELY.

Reel/Frame: 0299/0273

Pages: 1

Date Recorded: Dec. 08, 1976

Supporting Documents: No Supporting Documents Available

**Assignor**

Name: NATIONAL DAIRY PRODUCTS CORPORATION  
-CHANGED TO-  
Legal Entity Type: UNKNOWN

Execution Date: Nov, 17, 1976  
State or Country Where Organized: No Place Where Organized Found

Name: KRAFTCO CORPORATION -CHANGED TO-  
Legal Entity Type: UNKNOWN

Execution Date: Not Found  
State or Country Where Organized: No Place Where Organized Found

**Assignee**

Name: KRAFT, INC.  
Legal Entity Type: UNKNOWN

State or Country Where Organized: No Place Where Organized Found

Address: No Assignee Address Found

**Correspondent**

Correspondent Name: KRAFTCO CORPORATION  
Correspondent Address: KRAFTCO COURT  
GLENVIEW, IL 60025

**Domestic Representative - Not Found**

**Assignment 4 of 9**

Conveyance: MERGER AND CHANGE OF NAME 19861121

Reel/Frame: 0581/0737

Pages: 4

Date Recorded: Nov. 05, 1987

Supporting Documents: No Supporting Documents Available

Name: KRAFT, INC., MERGED INTO  
Legal Entity Type: CORPORATION

Name: DART & KRAFT, INC. CHANGED TO  
Legal Entity Type: CORPORATION

Name: DART & KRAFT, INC. CHANGED TO  
Legal Entity Type: CORPORATION

Address: No Assignee Address Found

Name: KRAFT, INC.  
Legal Entity Type: UNKNOWN

Address: No Assignee Address Found

Correspondent Name: KRAFT INC.  
Correspondent Address: KRAFT COURT  
GLENVIEW, IL 60025

**Assignor**

Execution Date: Nov. 22, 1986  
State or Country Where Organized: DELAWARE

Execution Date: Not Found  
State or Country Where Organized: DELAWARE

**Assignee**

State or Country Where Organized: DELAWARE

State or Country Where Organized: No Place Where Organized Found

**Correspondent**

Domestic Representative - Not Found

**Assignment 5 of 9**

Conveyance: CHANGE OF NAME (SEE DOCUMENT FOR DETAILS.)

Reel/Frame: 1290/0260

Pages: 33

Date Recorded: Jan. 17, 1995

Supporting Documents: No Supporting Documents Available

Name: KRAFT GENERAL FOODS, INC.  
Legal Entity Type: CORPORATION

Name: KRAFT FOODS, INC.  
Legal Entity Type: CORPORATION

Address: THREE LAKES DRIVE  
NORTHFIELD, ILLINOIS 60093

Correspondent Name: KRAFT FOODS, INC.  
Correspondent Address: MARY LOU HAFLINGER  
NF351  
THREE LAKES DRIVE  
NORTHFIELD, IL 60093

**Assignor**

Execution Date: Jan. 04, 1995  
State or Country Where Organized: DELAWARE

**Assignee**

State or Country Where Organized: DELAWARE

**Correspondent**

Domestic Representative - Not Found

**Assignment 6 of 9**

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: 2040/0212

Pages: 59

Date Recorded: Jan. 27, 2000

Supporting Documents: No Supporting Documents Available

Name: KRAFT FOODS, INC.  
Legal Entity Type: CORPORATION

Name: KRAFT FOODS HOLDINGS, INC.  
Legal Entity Type: CORPORATION

Address: THREE LAKES DRIVE

**Assignor**

Execution Date: Dec. 26, 1999  
State or Country Where Organized: DELAWARE

**Assignee**

State or Country Where Organized: DELAWARE

NORTHFIELD, ILLINOIS 60093

**Correspondent**

Correspondent Name: KRAFT FOODS  
Correspondent Address: JACQUELINE A. LEIMER  
THREE LAKES DRIVE NF-356  
NORTHFIELD, IL 60093

**Domestic Representative - Not Found**

**Assignment 7 of 9**

Conveyance: MERGER EFFECTIVE 08042008

Reel/Frame: 3877/0870

Pages: 9

Date Recorded: Oct. 28, 2008

Supporting Documents: assignment-tm-3877-0870.pdf

**Assignor**

Name: KRAFT FOODS HOLDINGS, INC.  
Legal Entity Type: CORPORATION

Execution Date: Aug. 01, 2008

State or Country Where Organized: DELAWARE

**Assignee**

Name: KRAFT FOODS GLOBAL BRANDS LLC  
Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Address: THREE LAKES DRIVE  
NF 584  
NORTHFIELD, ILLINOIS 60093

**Correspondent**

Correspondent Name: KRAFT FOODS GLOBAL BRANDS LLC  
Correspondent Address: THREE LAKES DRIVE  
NF 584  
NORTHFIELD, IL 60093

**Domestic Representative - Not Found**

**Assignment 8 of 9**

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: 4877/0862

Pages: 40

Date Recorded: Oct. 10, 2012

Supporting Documents: assignment-tm-4877-0862.pdf

**Assignor**

Name: KRAFT FOODS GLOBAL BRANDS LLC  
Legal Entity Type: LIMITED LIABILITY COMPANY

Execution Date: Sep. 29, 2012

State or Country Where Organized: DELAWARE

**Assignee**

Name: KRAFT FOODS GROUP BRANDS LLC  
Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Address: THREE LAKES DRIVE  
NORTHFIELD, ILLINOIS 60093

**Correspondent**

Correspondent Name: SUSAN H. FROHLING  
Correspondent Address: THREE LAKES DRIVE  
KRAFT FOODS LAW DEPARTMENT  
NORTHFIELD, IL 60093

**Domestic Representative - Not Found**

**Assignment 9 of 9**

Conveyance: MERGER AND CHANGE OF NAME 19891229DE

Reel/Frame: 0712/0439

Pages: 0

Date Recorded: Mar. 29, 1990

Supporting Documents: No Supporting Documents Available

**Assignor**

Name: GENERAL FOODS CORPORATION, (MERGED INTO)  
Legal Entity Type: CORPORATION

Execution Date: Not Found

State or Country Where Organized: DELAWARE

Name: KRAFT, INC., (CHANGED TO)

Execution Date: Not Found



Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

**Assignee**

Name: KRAFT, INC., (CHANGED TO)

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: No Assignee Address Found

Name: KRAFT GENERAL FOODS, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: No Assignee Address Found

**Correspondent**

Correspondent Name: MARY LOUISE RYAN

Correspondent Address: KRAFT GENERAL FOODS, INC.  
LAW DEPT. - C-4W - KRAFT COURT  
GLENVIEW, IL 60025

Domestic Representative - Not Found

## Proceedings

**Summary**

Number of Proceedings: 5

**Type of Proceeding: Opposition**

Proceeding Number: 91222051

Filing Date: May 21, 2015

Status: Pending

Status Date: May 21, 2015

Interlocutory Attorney: WENDY COHEN

**Defendant**

Name: It's a 10, Inc.

Correspondent Address: MERRY L BIGGERSTAFF  
TIAJOLLOFF & KELLY LLP  
405 LEXINGTON AVE  
NEW YORK NY, 10174-0002  
UNITED STATES

Correspondent e-mail: mbiggerstaff@tkiplaw.com

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
MIRACLE WHIPPED	Opposition Pending Plaintiff(s)	<u>86346128</u>	

Name: Kraft Foods Group Brands LLC

Correspondent Address: BARBARA A SOLOMON  
FROSS ZELNICK LEHRMAN & ZISSU PC  
866 UNITED NATIONS PLAZA  
NEW YORK NY, 10017  
UNITED STATES

Correspondent e-mail: bsolomon@fztlz.com , ykarzoan@fztlz.com

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
MIRACLE WHIP	Renewed	<u>71340290</u>	<u>308260</u>
MIRACLE WHIP	Renewed	<u>75184663</u>	<u>2103423</u>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	May 21, 2015	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	May 21, 2015	Jun 30, 2015
3	PENDING, INSTITUTED	May 21, 2015	
4	ANSWER	Jun 30, 2015	
5	P APPEARANCE / POWER OF ATTORNEY	Aug 20, 2015	

**Type of Proceeding: Opposition**

Proceeding Number: 91097128

Filing Date: May 03, 1995

Status: Terminated

Status Date: Dec 02, 1997

Interlocutory Attorney:

**Defendant**

Name: J.W. ALLEN & CO.

Correspondent Address: JOHN J. ARADO  
WILDMAN, HARROLD, ALLEN & DIXON  
225 W. WACKER DRIVE, SUITE 3000  
CHICAGO IL , 60606-1229  
UNITED STATES

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
WONDER WHIP	Renewed	<u>74415873</u>	<u>2200008</u>

**Plaintiff(s)**

Name: KRAFT FOODS, INC.,

Correspondent Address: PAULA M. TAFFE  
KRAFT FOODS, INC.  
THREE LAKES DRIVE, NF351  
NORTHFIELD IL , 60093  
UNITED STATES

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
MIRACLE WHIP	Renewed	<u>71340290</u>	<u>308260</u>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	May 03, 1995	
2	NOTICE SENT; ANSWER DUE (DUE DATE)	Jun 02, 1995	Jul 11, 1995
3	PENDING, INSTITUTED	Jun 02, 1995	
4	PL'S AMENDED NOTICE OF OPP	May 15, 1995	
5	DEF ALLOWED 20 DAYS TO ANSWER	Jun 20, 1995	
6	DELETE ENTRY	Jul 08, 1995	
7	ANSWER	Aug 03, 1995	
8	TRIAL DATES SET	Aug 18, 1995	
9	D'S MOT FOR EXTEN. OF TIME W/ CONSENT	Dec 15, 1995	
10	TRIAL DATES RESET	Feb 08, 1996	
11	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Jun 03, 1996	
12	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Jul 22, 1996	
13	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Nov 04, 1996	
14	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Nov 22, 1996	
15	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Dec 26, 1996	
16	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Jan 29, 1997	
17	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Feb 25, 1997	
18	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Mar 25, 1997	
19	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Apr 23, 1997	
20	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	May 29, 1997	
21	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Jun 27, 1997	
22	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Aug 01, 1997	
23	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Aug 01, 1997	
24	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Sep 02, 1997	
25	AMNDT OF SN 415873 & W/D OF OPP	Oct 14, 1997	
26	BOARD'S DECISION: DISMISSED	Dec 02, 1997	
27	TERMINATED	Dec 02, 1997	

**Type of Proceeding: Cancellation**Proceeding Number: 92019483

Filing Date: Nov 21, 1990

Status: Terminated

Status Date: Feb 05, 1992

Interlocutory Attorney: TERRY E HOLTZMAN

**Defendant**

Name: BORDEN, INC.

Correspondent Address: 180 E. BROAD STREET  
COLUMBUS, OHIO 43215**Associated marks**

Mark	Application Status	Serial Number	Registration Number
MIRACLE MELT	Expired	<u>72444432</u>	<u>982034</u>

**Plaintiff(s)**

Name: KRAFT GENERAL FOODS, INC.

Correspondent Address: AMANDA LAURA NYE  
DARBY & DARBY  
805 THIRD AVENUE  
NEW YORK NY, 10022  
UNITED STATES**Associated marks**

Mark	Application Status	Serial Number	Registration Number
MIRACLE WHIP	Renewed	<u>71340290</u>	<u>308260</u>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Nov 21, 1990	
2	NOTICE SENT; ANSWER DUE (DUE DATE)	Feb 19, 1991	Apr 01, 1991
3	PENDING, INSTITUTED	Feb 19, 1991	
4	STIP TO SUSPEND RE C/A	Mar 20, 1991	
5	SUSPENDED PENDING DISP OF CIVIL ACTION	Apr 18, 1991	
6	STIP TO DISMISS W/PREJUDICE	Sep 25, 1991	
7	BOARD'S DECISION: DISMISSED W/ PREJUDICE	Oct 25, 1991	
8	TERMINATED	Feb 05, 1992	

**Type of Proceeding: Opposition**Proceeding Number: 91066649

Filing Date: Sep 22, 1982

Status: Terminated

Status Date: May 18, 1984

Interlocutory Attorney:

**Defendant**

Name: HENRI'S FOOD PRODUCTS CO., INC.

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
HENRI'S YOGOWHIP	Cancelled - Section 8	<u>73327205</u>	<u>1286160</u>

**Plaintiff(s)**

Name: KRAFT, INC.

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
MIRACLE WHIP	Renewed	<u>71340290</u>	<u>308260</u>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED	Sep 22, 1982	
2	PENDING, INSTITUTED	Oct 27, 1982	
3	BO'S DECISION: DISMISSED W/O PREJUDICE	Apr 24, 1984	
4	TERMINATED	May 18, 1984	

**Type of Proceeding: Opposition**Proceeding Number: 91059641

Filing Date: May 17, 1977

Status: Terminated

Status Date: Oct 29, 1984

Interlocutory Attorney: PAULA T HAIRSTON

**Defendant**

Name: HENRI'S FOOD PRODUCTS COMPANY

**Associated marks****Mark****Application Status****Serial  
Number****Registration  
Number**

Abandoned - Failure to Respond

73092664**Plaintiff(s)**

Name: KRAFT, INC.

**Associated marks****Mark****Application Status****Serial Number****Registration  
Number**

MIRACLE WHIP

Renewed

71340290308260**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED	May 17, 1977	
2	PENDING, INSTITUTED	Aug 09, 1977	
3	ANSWER AND COUNTERCLAIM	Aug 22, 1977	
4	WITHDRAWAL OF COUNTERCLAIM	Mar 01, 1984	
5	COUNTERCLAIM DISMISSED W/O PREJUDICE; APPLICATION REMANDED TO EXMR. RE AMEND	May 22, 1984	
6	BOARD'S DECISION: DISMISSED	May 22, 1984	
7	TERMINATED	Oct 29, 1984	

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **OPPOSER'S FIRST AMENDED NOTICE OF OPPOSITION** was served by mail to Applicant's attorney, this 4th day of September, 2015, to:

Merry L Biggerstaff, Esq.  
Tiajolloff & Kelly LLP  
405 Lexington Ave  
New York, NY 10174-0002



Barbara A. Solomon